

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADAM MOORE,)	Case No.14cv2604 AJB (RBB)
Plaintiff,)	
v.)	
UNIVERSAL VACATION CLUB,)	ORDER GRANTING DEFENDANT
INC.; THE VILLA GROUP, INC.; and)	UNIVERSAL VACATION CLUB,
DOES 1 to 10, Inclusive,)	INC.'S MOTION FOR FORUM
Defendants.)	NON CONVENIENS DISMISSAL
)	(Doc. No. 4.)

Before this Court is a motion to dismiss for forum non conveniens, filed by Defendant Universal Vacation Club, Inc. ("UVC"). (Doc. No. 4.) Plaintiff, Adam Moore ("Plaintiff"), did not file an opposition to the motion. This motion is suitable for determination on the papers and without oral argument in accordance with Civil Local Rule 7.1.d.1. Accordingly, no appearances are required and the motion will be deemed submitted as of this date.

Upon consideration of the motion and UVC's arguments in support, the Court **GRANTS** UVC's motion to dismiss.

I. BACKGROUND

A. Factual Background¹

This case revolves around an incident that occurred at the Villa del Palmar Resort in Cabo San Lucas, Baja California Sur, Mexico (the "Resort"). (Compl. 1-2, Doc. No. 1.)

¹ The facts herein are derived from the Complaint. (Doc. No. 1.)

1 Plaintiff, an individual, resides in Henderson, Colorado. (*Id.* at 2.) Defendant UVC is a
 2 California corporation whose primary business and headquarters are located in San Diego,
 3 California. (*Id.*) Plaintiff asserts that on information and belief, Defendant Villa Group,
 4 Inc. (“Villa Group”) is a Mexican corporation, although Plaintiff, at the time of filing this
 5 complaint, did not know the state of incorporation and headquarters. (*Id.*) UVC and Villa
 6 Group are jointly referred to as “Defendants”.

7 On or about November 2, 2013, Plaintiff was vacationing at the Resort. (*Id.* at 1-2.)
 8 While in the pool area of the Resort (the “Premises”), Plaintiff placed his left hand on a
 9 glass table, and his left arm broke through the glass up to Plaintiff’s biceps (the “Incident”).
 10 (*Id.* at 3.) Two doctors who were present, one an American guest and the second a Mexican
 11 doctor, bandaged the wound. (*Id.*) Plaintiff was transported to a local hospital emergency
 12 room at the Centro Medico Cabo San Lucas, where he received three blood transfusions and
 13 emergency surgery. (*Id.*) The next morning, Plaintiff was flown by Air Evac to San Diego
 14 International Airport then transported by Pacific Ambulance to University of California San
 15 Diego Hospital (“UCSD”), where he received a second surgery. (*Id.*) On or about
 16 November 6, 2013, Plaintiff was discharged from UCSD and returned to Colorado. (*Id.*)

17 Plaintiff asserts that the Resort consists of a hotel operated by Villa Group and a time-
 18 share condominium complex operated by UVC. (*Id.*) Plaintiff further asserts that Villa
 19 Group and UVC jointly operate common resort areas, including the pool, and “jointly
 20 owned, leased, occupied, controlled, and/or maintained the Premises at the time of the
 21 Incident.” (*Id.* at 3-4.)

22 **B. Procedural Background**

23 Plaintiff filed this action on October 31, 2014, claiming premises liability pursuant
 24 to Cal. Civ. Code Section 1714(a) and Mexican extra-contractual civil liability pursuant to
 25 Mexico’s Federal Civ. Code Article 1910. (*See id.* at 4.) Defendant UVC filed a motion to
 26 dismiss for forum non conveniens on January 12, 2015. (Mot. to Dismiss, Doc. No. 4.) This
 27 Court set a briefing schedule as to the motion to dismiss on January 12, 2015. (Order, Doc.
 28 No. 5.) The briefing schedule ordered the opposition due by January 28, 2015, and the reply

1 due by February 4, 2015. (*See id.*) The hearing for the motion to dismiss was set for April
 2 2, 2015. (*See id.*) Plaintiff did not, and to this date has not, filed a response to the motion
 3 to dismiss. Defendant UVC filed a reply on February 5, 2015.² (Reply Supp. Dismiss, Doc.
 4 No. 8.)

5 **II. DISCUSSION**

6 The Court now addresses UVC's motion for forum non conveniens dismissal, which
 7 asserts that 1) the State of Baja California Sur, Mexico, provides an adequate alternative
 8 forum; 2) Mexican law provides an adequate alternative forum; 3) the private interest factors
 9 favor dismissal for forum non conveniens; and 4) the public interest factors favor dismissal
 10 for forum non conveniens. (Mem. Supp. Dismiss 5, 9, 11, 17, Doc. No. 4-1.)

11 Plaintiff asserts that venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(3)
 12 because UVC resides within this district and no other venue is allowable pursuant to 28
 13 U.S.C. § 1391(b)(1) or (2). (Compl. 2); *see Piedmont Label Co. v. Sun Garden Packing Co.*,
 14 598 F.2d 491, 496 (9th Cir. 1979) (noting that the plaintiff has the burden of showing that
 15 venue is proper).

16 “The principle of forum non conveniens is simply that a court may resist imposition
 17 upon its jurisdiction *even when* jurisdiction is authorized by the letter of a general venue
 18 statute.” *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1224 (9th Cir. 2011)
 19 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947) (emphasis added)).³ Therefore,
 20 even if venue is proper in the Southern District of California, this Court may still consider
 21 the motion to dismiss for forum non conveniens. *See Carijano*, 643 F.3d at 1224 (“The

22
 23 ² Defendant previously filed a reply (Doc. No. 7) on February 4, 2015, however,
 24 pursuant to the Court's request, later filed a notice of withdrawal of document number 7
 (Doc. No. 9) because the deficiencies with document number 7 were corrected with the
 subsequent reply (Doc. No. 8).

25 ³ *Gulf Oil Corp. v. Gilbert* has been superseded by the passage of 28 U.S.C.
 26 § 1404(a) as far as transfers from one federal court to another federal court, but is still
 27 instructive for transfers to a forum outside the federal system. *Quackenbush v. Allstate*
 28 *Ins. Co.*, 517 U.S. 706, 722 (1996) (noting the forum non conveniens function of
 dismissal with the expectation of re-filing in a different federal court has been
 superseded by statute, but the Supreme Court continues to recognize federal courts'
 power to dismiss damages actions under the common-law forum non conveniens
 doctrine in cases where the alternative forum is abroad).

1 doctrine ‘is based on the inherent power of the courts to decline jurisdiction in exceptional
 2 circumstances.’”) (quoting *Paper Operations Consultants Int’l, Ltd. v. S.S. Hong Kong*
 3 *Amber*, 513 F.2d 667, 670 (9th Cir. 1975)). The doctrine of forum non conveniens is an
 4 exercise of the court’s inherent power and, unlike transfer of venue, results in dismissal.
 5 *Carijano*, 643 F.3d at 1224.

6 “To prevail on a motion to dismiss based upon forum non conveniens, a defendant
 7 bears the burden of demonstrating an adequate alternative forum, and that the balance of
 8 private and public interest factors favors dismissal.” *Id.* at 1224 (citing *Dole Food Co. v.*
 9 *Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002)).

10 **A. Adequacy of Alternative Forum**

11 To dismiss on the ground of forum non conveniens, a court must examine whether
 12 there is an adequate alternative forum. *Cooper v. Tokyo Elec. Power Co.*, No. 12-CV-3032
 13 JLS WMC, 2014 WL 5465347, at *12 (S.D. Cal. Oct. 28, 2014). “An alternative forum is
 14 deemed adequate if: (1) the defendant is amenable to process there; and (2) the other
 15 jurisdiction offers a satisfactory remedy.” *Carijano*, 643 F.3d. at 1225 (citing *Piper Aircraft*
 16 *Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)).

17 **1. Whether Defendants are Amenable to Process in Mexico**

18 Turning to the first requirement for establishing an alternative forum, Defendant UVC
 19 agrees to submit to the jurisdiction of the courts of Baja California Sur, Mexico, and will
 20 accept service of process, so long as Plaintiff files suit within three months of the dismissal.
 21 (Mem. Supp. Dismiss 8; Kistner Decl. ¶ 13, Doc. No. 4-2 (declaration of the president of
 22 UVC).)

23 As to named Defendant Villa Group, Plaintiff asserts Villa Group is a Mexican resort
 24 and time-share corporation, but does not know the state of incorporation and headquarters,
 25 despite significant investigation. (Compl. 2.) UVC asserts Villa Group is not a recognized
 26 legal entity, but rather a trade name for the various hotels, resorts, and spas. (Mem. Supp.
 27 Dismiss 11; Madera Decl. ¶ 3, Doc. No. 4-3 (declaration of the administrative director of
 28 Caboland).) On a motion to dismiss, the court must accept all allegations of material fact

1 in the complaint as true, and draw all reasonable inferences in favor of plaintiffs. *Cahill v.*
 2 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). Taking Plaintiff's alleged facts
 3 as true, Villa Group, a Mexican corporation, would be subject to jurisdiction in Mexico.
 4 Therefore, this Court is comfortable finding that Villa Group is amenable to process in
 5 Mexico.

6 UVC asserts that the owner of the Resort is Caboland S.A. de C.V. ("Caboland").
 7 (Mem. Supp. Dismiss 11-12; Madera Decl. ¶ 6.) UVC further asserts that Caboland
 8 contracts with Operadora Palmar Cabo, S.A. de C.V. ("Operadora") for the operation,
 9 maintenance, and management of the Resort. (Mem. Supp. Dismiss 12; Madera Decl. ¶ 7.)
 10 Caboland and Operadora are willing to submit to the jurisdiction of the courts of Baja
 11 California Sur, Mexico, so long as Plaintiff files suit within three months of dismissal, and
 12 accept service of process. (Mem. Supp. Dismiss 8; Madera Decl. ¶ 24.)

13 Because UVC, as well as potential parties Caboland and Operadora, have submitted
 14 to the jurisdiction of the courts of Baja California Sur, Mexico, and accept service of
 15 process, and because Villa Group, a Mexican corporation, is amenable to service in Mexico,
 16 the first requirement for establishing an adequate alternative forum has been met. *See*
 17 *Carijano*, 643 F.3d at 1225 (holding that the defendant's voluntary submission to service
 18 of process sufficed to meet the first requirement for establishing adequate alternative forum,
 19 where the defendant stipulated to service of process and consented to jurisdiction there).

20 **2. Whether Mexico Offers a Satisfactory Remedy**

21 The second requirement for establishing adequate alternative forum, that the other
 22 jurisdiction offers a satisfactory remedy, is easy to satisfy. *Carijano*, 643 F.3d at 1225-26
 23 (citations omitted). The alternative forum must provide some remedy for the forum to be
 24 adequate, and "typically, a forum will be inadequate only where the remedy provided is so
 25 clearly inadequate or unsatisfactory, that it is no remedy at all." *Palmco Corp. v. JSC*
 26 *Techsnabexport*, 448 F. Supp. 2d 1194, 1200 (C.D. Cal. 2006); *see also Piper*, 454 U.S. at
 27 250, 254 n.22 ("[D]ismissal on grounds of forum non conveniens may be granted even
 28 though the law applicable in the alternative forum is less favorable to the plaintiff's chance

1 of recovery. . . . [H]owever, where the remedy offered by the other forum is clearly
 2 unsatisfactory, the other forum may not be an adequate alternative.”).

3 The Plaintiff in this case brings two causes of action, one for premises liability
 4 pursuant to Cal. Civ. Code Section 1714(a) asserting that Defendants’ negligence caused
 5 Plaintiff’s injuries, and the second for Mexican extra-contractual civil liability pursuant to
 6 Mexico’s Federal Civ. Code Article 1910. (Compl. 4.) Because Plaintiff’s second cause
 7 of action is under Mexican law, the only issue is whether Mexico offers a satisfactory
 8 remedy for the first cause of action under California state law.

9 UVC asserts that the remedy for the premises liability claim would be available in
 10 Mexico by bringing claims for breach of non-contractual obligations for any negligence on
 11 the part of Defendants that caused Plaintiff’s damages. (Mem. Supp. Dismiss 9; Garcia
 12 Decl. ¶ 11, Doc. No. 4-4.) As support, UVC submitted a declaration of Manuel Garcia
 13 Pimentel Caraza (“Garcia”), who is an attorney in good standing and licensed to practice law
 14 in the United Mexican States and also has experience with law school professorships in
 15 Mexico City, Mexico. (Garcia Decl. ¶¶ 2-3.) Garcia’s declaration provided an in-depth
 16 explanation of the Mexican legal system, applicable substantive law, and local procedural
 17 law. (*See generally* Garcia Decl.) Garcia testified that Plaintiff, in a subjective liability
 18 case, can request restitution of the previous situation, if possible, and if not, the payment of
 19 damages and losses. (*Id.* ¶ 20.) If Plaintiff were to prevail, he would be entitled to
 20 indemnification as well as compensation of “moral damages”. (*Id.* ¶¶ 21, 24.)

21 In *Carijano*, the Ninth Circuit affirmed the district court’s holding that the Peruvian
 22 legal system offered a satisfactory remedy. *Carijano*, 643 F.3d at 1226. The district court
 23 based its decision on the affidavit of the defendant’s expert,⁴ which provided an in-depth
 24 exploration of Peruvian statutory law and civil procedure, and testified that “Peruvian law
 25

26 ⁴ Unlike the court in *Carijano*, this Court does not have an opposition, declaration,
 27 or affidavit from Plaintiff to consider, and instead bases its decision on the testimony
 28 submitted by UVC (Garcia Decl.). *See Carijano*, 643 F.3d at 1225 (holding that the
 district court properly exercised its broad discretion to weigh the evidence in this
 context, where the district court disregarded the plaintiffs’ expert declaration and
 credited the defendant’s expert’s affidavit).

1 has analogies for all the substantive legal theories on which the lawsuit filed in the Los
 2 Angeles jurisdiction is based” and “Peruvian substantive norms on civil liability allow a
 3 lawsuit for damages to be processed on the facts set forth in the complaint.” *Carijano*, 643
 4 F.3d at 1225.

5 Similar to *Carijano*, UVC has submitted testimony sufficient to persuade the Court
 6 that the Mexican legal system can offer sufficient remedy for Plaintiff’s claims. *Compare*
 7 *Kryzanowski v. Wyndham Hotels & Resorts, LLC*, No. 13 CV 1077 L(MDD), 2014 WL
 8 895449, at *2-3 (S.D. Cal. March 6, 2014) (finding no adequate forum where the defendants
 9 never addressed whether Mexican law provides an adequate forum for strict products
 10 liability claims, and plaintiff argued Mexico’s system of liability for damages can only be
 11 imposed on the wrongdoer itself, therefore defendants’ vicarious liability lacked the
 12 necessary relationship under Mexican law, effectively affording plaintiff no remedy at all).

13 After carefully considering the evidence submitted by UVC, the Court finds that the
 14 State of Baja California Sur, Mexico, provides an adequate alternative forum.

15 **B. Balance of Private and Public Interest Factors**

16 The Court must next assess whether the balance of the private and public interest
 17 factors strongly favor dismissal. “[A] plaintiff’s choice of forum will generally not be
 18 disturbed unless both private and public factors strongly favor trial in a foreign forum.”
 19 *Palmco Corp.*, 448 F. Supp. 2d at 1198 (citing *Lueck v. Sundstrand Corp.*, 236 F.3d 1137,
 20 1145 (9th Cir. 2001)).

21 **1. Private Interest Factors**

22 “The factors relating to the private interests of the litigants include: ‘(1) the residence
 23 of the parties and the witnesses; (2) the forum’s convenience to the litigants; (3) access to
 24 physical evidence and other sources of proof; (4) whether unwilling witnesses can be
 25 compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the
 26 judgment; and (7) all other practical problems that make trial of a case easy, expeditious and
 27 inexpensive.’” *Carijano*, 643 F.3d at 1229 (quoting *Boston Telecomms. Grp. v. Wood*, 588
 28 F.3d 1201, 1206-07 (9th Cir. 2009)).

a. Residence of the Parties and the Witnesses

Plaintiff is a resident of Colorado. (Compl. 2.) Defendant UVC is a California corporation whose primary place of business is in San Diego, California. (Compl. 2; Mem. Supp. Dismiss 1.) Plaintiff asserts that Villa Group is a Mexican resort and timeshare corporation, however, Plaintiff does not know Villa Group's state of incorporation or headquarters. (Compl. 2). UVC asserts that Villa Group is not a valid entity but rather a trade name used to describe various hotels, resorts, and spas. (Mem. Supp. Dismiss 2-3, 6; Madera Decl. ¶ 3.)

As to UVC, the only defendant to appear in this matter, UVC argues that it is not an appropriate defendant in this case because UVC does not own, operate, or manage the Resort; exercises no control over and is not responsible for the maintenance of the area where the Incident took place; is not responsible for and does not have any duties relating to the individuals who work at the Resort; and is not responsible for Resort policies, procedures, or day-to-day operations of the Resort. (Mem. Supp. Dismiss 2, 6; Kistner Decl. ¶¶ 4-7; Madera Decl. ¶¶ 14-15, 17.) Plaintiff alleges UVC, jointly with Villa Group, operates common resort areas, such as the pool where the Incident took place. (Compl. 3.) As already noted, on a motion to dismiss, the court must accept all allegations of material fact in the complaint as true, and draw all reasonable inferences in favor of plaintiff. *Cahill*, 80 F.3d at 337-38. Since allegations of the Complaint must be accepted as true, this Court must assume that UVC does operate the Premises where the Incident occurred. Applying the same standard to Villa Group, this Court must assume that Villa Group is a Mexican resort and timeshare corporation, as plaintiff has alleged. UVC is a California corporation and Villa Group is a Mexican corporation, therefore the residence of Defendants does not favor either forum. Plaintiff is a resident of Colorado, which also favors neither a California nor Mexico forum.

As to the witnesses in this case, UVC asserts that with the exception of Plaintiff, all potential witnesses are located in Mexico including employees of the Resort; the individual(s) who transported Plaintiff to the Centro Medico Cabo San Lucas; and intake

1 and medical personnel at Centro Medico Cabo San Lucas. (Mem. Supp. Decl. 12-13; *see*
 2 Madera Decl. ¶ 21 (identifying, by name and occupation, seven relevant witnesses who are
 3 all located in Mexico); Madera Decl. ¶ 22 (declaring that Caboland and Operadora are not
 4 aware of any witnesses in California who have firsthand knowledge regarding the incident,
 5 other than medical personnel who may have performed secondary treatment).) Plaintiff
 6 alleges that two doctors gave immediate aid, one being an American hotel guest, and the
 7 other a Mexican doctor. (Compl. 3.) UVC correctly points out that the American doctor's
 8 residence was not specified in the Complaint. (Mem. Supp. Dismiss 13.) The Court is
 9 compelled to consider that personnel at UCSD, where Plaintiff received a second surgery,
 10 may be potential witnesses. Even considering the UCSD personnel and the American doctor
 11 to be potential witnesses who potentially reside in California, the majority of important
 12 witnesses in this case are located in Mexico, which weighs in favor of dismissal.

13 Because the residence of the parties favors neither forum, and the residence of the
 14 witnesses favors a Mexico forum, this factor favors dismissal.

15 **b. Forum's Convenience to the Parties**

16 A showing of inconvenience by a defendant will usually be outweighed by a showing
 17 of convenience by a party who has sued in his home forum. *Loya v. Starwood Hotels &*
 18 *Resorts Worldwide, Inc.*, 583 F.3d 656, 664 (9th Cir. 2009). Greater deference is afforded
 19 to a plaintiff's choice of home forum because it is presumptively convenient. *Carijano*, 643
 20 F.3d at 1227. However, the deference is far from absolute and "[a] district court has
 21 discretion to decide that a foreign forum is more convenient." *Loya*, 583 F.3d at 665.

22 Plaintiff is a resident of Colorado and has chosen to bring this action in San Diego,
 23 California. The Southern District of California is not Plaintiff's home forum and indeed San
 24 Diego, California, is far from Henderson, Colorado, thus rendering this Court not
 25 presumptively convenient for Plaintiff. Therefore, this Court declines to give greater
 26 deference to Plaintiff's choice of forum. *See Lueck*, 236 F.3d 1137, 1145 (9th Cir. 2001)
 27 (noting that a plaintiff's choice of forum merits less deference and the showing required for
 28 dismissal is reduced when a plaintiff does not reside in the selected forum). Still affording

1 some deference to Plaintiff's choice, this Court moves forward in analyzing the convenience
 2 of forum. *See Carijano*, 643 F.3d at 1227 (noting that less deference does not mean no
 3 deference).

4 UVC is located in San Diego, California; Plaintiff is located in Henderson, Colorado;
 5 and the Incident occurred in Mexico. If the case goes forward in Mexico, both Plaintiff and
 6 Defendant will have to travel to Mexico for trial, which is an inconvenience for both parties.
 7 If the case goes forward in California, only Plaintiff will need to travel for trial. UVC
 8 argues a Mexico forum will be more convenient for both Plaintiff and Defendants because
 9 that is where the Incident occurred, where evidence is located, where witnesses are located,
 10 and where any investigation of the Premises will need to occur. (Compl. 3; Mem. Supp.
 11 Dismiss 12-13.) However, the Court is compelled to consider that both Plaintiff and UVC
 12 may have to travel to Mexico to conduct interviews, depositions, and investigations,
 13 regardless of whether the forum is in California or Mexico. Notably, at trial in a California
 14 forum, obtaining testimony from witnesses who are located in Mexico will be an additional
 15 inconvenience. (Mem. Supp. Dismiss 15.)

16 After carefully considering all of the facts, this is a neutral factor. *See Boston*
 17 *Telecomms.*, 588 F.3d at 1208 (finding the convenience factor to be neutral where similar
 18 logistical considerations would apply in either forum).

19 **c. Access to Physical Evidence and Other Sources of Proof**

20 As far as physical evidence and other sources of proof, the Incident occurred in
 21 Mexico and the glass table that caused Plaintiff's injury is presumably in Mexico. UVC
 22 asserts that any documents related to the maintenance responsibilities, maintenance
 23 procedures, and maintenance history of the Resort, as well as documents regarding the
 24 Incident itself, are presumably in Mexico. (Mem. Supp. Dismiss 13; Madera Decl. ¶ 23.)

25 Operadora, the operator of the Premises, is a Mexican entity (Madera Decl. ¶ 7) and
 26 Caboland, the owner of the Resort, is also a Mexican entity (Madera Decl. ¶¶ 2, 6).
 27 Therefore, it is entirely reasonable to presume that documents relating to the operation of
 28

1 the Premises and the Incident itself are in Mexico. When all of the evidence is properly
2 considered, this factor weighs heavily in favor of dismissal.

3 **d. Whether Unwilling Witnesses Can Be Compelled to Testify**

4 UVC argues that nearly all percipient witnesses and employees of Caboland and
5 Operadora who would have knowledge about the business practices of the Mexican entities
6 are located in Mexico. (Mem. Supp. Dismiss 12-14; *see* Madera Decl. ¶ 21 (identifying, by
7 name and occupation, seven relevant witnesses who are all located in Mexico); Madera
8 Decl. ¶ 22 (declaring that Caboland and Operadora are not aware of any witnesses in
9 California who have firsthand knowledge regarding the incident, other than medical
10 personnel who may have performed secondary treatment).) UVC asserts that Mexico has
11 a process to compel the attendance of unwilling witnesses and Mexican courts have the
12 ability to subpoena witnesses located in Mexico. (Mem. Supp. Dismiss 13; Garcia Decl.
13 ¶ 45.) UVC contends that these witnesses are beyond the jurisdictional reach of this Court
14 because they are located in Mexico, making it impossible to compel unwilling witnesses to
15 testify. (Mem. Supp. Dismiss ¶¶ 14-15.)

16 The Ninth Circuit has noted that the initial question for this factor is not whether there
17 are witnesses beyond the reach of compulsory process, but rather “whether it has been
18 alleged or shown that witnesses would be unwilling to testify.” *Carijano*, 643 F.3d at 1231
19 (citing *Duha v. Agrium, Inc.*, 448 F.3d 867, 877 (6th Cir. 2006) (“When no witness’
20 unwillingness has been alleged or shown, a district court should not attach much weight to
21 the compulsory process factor.”)).

22 UVC did not overtly argue in its motion that there are witnesses who would be
23 unwilling to testify. However, by contending that it would be impossible to compel the
24 attendance of unwilling witnesses who are located in Mexico, the Court can infer that there
25 are witnesses who would be unwilling to testify in California. Indeed, this Court could not
26 compel these witnesses to appear and testify in this Court. *See Gallego v. Garcia*, 2010 WL
27 2354585, at *4 (S.D. Cal. June 9, 2010) (finding that the compulsory process factor weighed
28 in favor of dismissal because the court did not have the means to compel unwilling

witnesses residing in Mexico to appear and testify in the United States District Court for the Southern District of California).

Because there are unwilling witnesses located in Mexico who could not be compelled to testify in California, this factor weighs in favor of dismissal.

e. Cost of Bringing Witnesses to Trial

As discussed above, UVC asserts that nearly all witnesses and individuals who would have relevant knowledge are located in Mexico. (Mem. Supp. Dismiss 12-14; *see* Madera Decl. ¶ 21 (identifying, by name and occupation, seven relevant witnesses who are all located in Mexico); Madera Decl. ¶ 22 (declaring that Caboland and Operadora are not aware of any witnesses in California who have firsthand knowledge regarding the incident, other than medical personnel who may have performed secondary treatment).) UVC asserts the cost of obtaining the testimony and appearance of the Mexican witnesses at trial in this Court would be extraordinary. (Mem. Supp. Dismiss 15.) The UCSD personnel are likely located in California, however, the role of these witnesses appear to be minor and Plaintiff has offered no argument or assertion as to his intention of bringing these Californians to trial, nor the cost of bringing such witnesses to trial in a Mexico forum.

While UVC did not contend an exact amount, and without making a finding as to the exact cost of bringing Mexican witnesses to trial, the Court is persuaded, based on the location of the witnesses, that the cost of bringing witnesses to trial would be greater in California than in Mexico. Therefore, this factor weighs in favor of dismissal.

f. Enforceability of the Judgment

UVC is a California corporation, therefore any judgment rendered in California would be enforceable as to UVC. UVC asserts that a judgment obtained in Mexico would be enforceable in the United States because Mexico's judicial system complies with due process. (Mem. Supp. Dismiss 15.)

"A Mexican judgment against [] American defendants would be enforceable in the United States." *Loya v. Starwood Hotels & Resorts*, 2007 WL 1991163, at *8 (W.D. Wash. July 6, 2007) (finding that a Mexico judgement would be enforceable in Washington

1 because Washington has adopted the Uniform Foreign Money-Judgments Recognition Act,
 2 which provides for enforcement of foreign judgments) (affirmed by *Loya*, 583 F.3d 656);
 3 *see also* Cal. Civ. Proc. Code § 1713 (adopting the Uniform Foreign-Country Money
 4 Judgments Recognition Act). “California generally enforces foreign judgments, as long as
 5 they are issued by impartial tribunals that have afforded the litigants due process.”
 6 *Carijano*, 643 F.3d 1231-32 (citing Cal. Civ. Proc. Code §§ 1716(a)-(d)).

7 Garcia testified by declaration that the Political Constitution of the United Mexican
 8 States (“CPEUM”)⁵ “contains constitutional or fundamental rights equivalent to those rights
 9 set forth in the Bill of Rights of the United States Constitution, including due process of
 10 law. . . .” (Garcia Decl. ¶ 37.) Garcia further declares that decisions in Mexico courts “shall
 11 be made in a rapid, complete, and impartial manner.” (Garcia Decl. ¶ 38.) The Court has
 12 not found, and Plaintiff has not asserted information to the contrary.

13 In light of evidence presented and the Court’s independent review, this Court is
 14 convinced that Mexico’s judicial system is impartial and complies with due process for
 15 purposes of this motion. Therefore, this Court finds that a Mexico judgment would be
 16 enforceable in California and against UVC. Accordingly, any judgment rendered against
 17 UVC either in Mexico or California would be enforceable against UVC. Therefore, as to
 18 UVC, this factor is neutral.

19 As to Villa Group, Plaintiff alleges that Villa Group is a Mexican corporation.
 20 (Compl. 2.) Therefore, a Mexico judgment would be enforceable against Villa Group.
 21 Neither party has provided, and this Court has not found, any authority as to the
 22 enforceability of a California judgment on a Mexican defendant in Mexico. This Court is
 23 not compelled to presume either way, and therefore finds this factor neutral.

24 **g. All Other Practical Problems**

25 As to all other practical problems that make trial of a case easy, expeditious, and
 26 inexpensive, UVC asserts that trial in a California forum would cause exceptional costs and

27
 28 ⁵ Paragraph 37 of the Garcia declaration references “CPEM,” however, the Court believes this was a typographical error as CPEM is not indicated to be an abbreviation in the declaration.

1 delay. (Mem. Supp. Dismiss 15.) This Court agrees that identifying and bringing evidence
 2 and witnesses located in Mexico before this Court will likely cause delay and extra costs
 3 that would not be an issue in a Mexico forum. UVC further asserts that litigation in Mexico
 4 would be cost efficient for Plaintiff because, unlike California courts, Mexico does not have
 5 court fees for filing a civil action, foreign plaintiffs are not required to post a bond, no fees
 6 are required to appear before Mexican courts, and interpreters can be provided. (Mem.
 7 Supp. Dismiss 16; Garcia Decl. ¶ 38.)

8 UVC also argues that “exceptional costs and inefficiencies of discovering and
 9 presenting at trial the witnesses and documents uniquely located in Mexico present major
 10 obstacles to a fair trial in this Court.” (Mem. Supp. Dismiss 16.) However, UVC fails to
 11 explain how witnesses and documents being located in Mexico will affect the fairness of
 12 trial in this Court. While it is reasonable to find that the witnesses, documents, and evidence
 13 being located in Mexico will make trial in this Court more costly, and more lengthy, this
 14 Court is not persuaded that it will make trial unfair.

15 Although not decisive, the extra costs and time concerns of litigating a case that is
 16 based on an incident that occurred in Mexico, in a California forum, weigh in favor of
 17 dismissal.

18 After careful consideration of all the private interest factors, this Court finds that
 19 private interests favor dismissal.

20 **2. Public Interest Factors**

21 Having considered all relevant private interest factors, this Court must also balance
 22 public interest factors. The public interest factors include: (1) the local interest in the
 23 lawsuit; (2) the court’s familiarity with the governing law; (3) burden on local courts and
 24 juries; 4) congestion in the court; and 5) costs of resolving a dispute unrelated to a particular
 25 forum. *Carijano*, 643 F.3d at 1232.

26 **a. Local Interest in the Lawsuit**

27 The aim of the local interest factor is to determine “if the forum in which the lawsuit
 28 was filed has its own identifiable interest in the litigation which can justify proceeding in

spite of [] burdens” such as “factors regarding familiarity with the applicable law, docket congestion, and costs and other burdens on local courts and juries . . .” *Carijano*, 643 F.3d 1232.

As alleged by Plaintiff, named Defendant Villa Group is a Mexican corporation. (Compl. 2.) UVC argues Mexico and Baja Sur have substantial interests in this case because they regulate Mexican businesses and hold them accountable for their wrongful acts, and because they have an interest in ensuring that foreign tourists are treated fairly so that Mexico’s vital tourist industry does not suffer. (Mem. Supp. Dismiss 19.) On the other hand, UVC argues California has virtually no interest in this case based solely on UCSD’s role in giving Plaintiff secondary medical treatment and UVC’s residence in California. (Mem. Supp. Dismiss 19.) The Court is persuaded that Mexico has a substantial interest, but notes that California has a “significant interest in providing a forum for those harmed by its corporate citizens.” *Carijano*, 643 F.3d 1232.

The Court finds it decisive that the incident took place in Mexico, and the harm was to a Colorado defendant. Although this Court has an interest in the lawsuit, it is slight when looking at Mexico’s interest. *Compare id.*, 643 F.3d at 1228, 1233 (finding, in a case involving one domestic plaintiff alongside 25 foreign plaintiffs, that “[t]here can be no question that the local interest factor weighs in favor of a California forum where a California plaintiff is suing a California defendant over conduct that took place in the state”). Therefore, this factor weighs in favor of dismissal.

b. Court’s Familiarity with the Governing Law

Plaintiff brings two claims, one pursuant to California law and the other pursuant to Mexican law. Litigating this case in either a California forum or a Mexico forum will require each forum to deal with foreign law. Therefore, this factor is neutral.

c. Burden on Local Courts and Juries

UVC argues it would be an inappropriate use of this jurisdiction’s resources to hear this case. (Mem. Supp. Dismiss 17.) UVC urges that this case has no connection with this District because UVC exercised no control over the furniture involved, the Premises where

1 the Incident occurred, or the individuals who work at the Resort. (Mem. Supp. Dismiss 18,
 2 20; Kistner Decl. ¶¶ 4-7; Madera Decl. ¶¶ 14-15, 17.) As already noted, the Court must
 3 assume that UVC operates the Premises where the Incident took place. *See Cahill*, 80 F.3d
 4 at 337-38 (noting that on a motion to dismiss, the court must accept all allegations of
 5 material fact in the complaint as true, and draw all reasonable inferences in favor of
 6 plaintiffs); (*see also* Compl. 3 (Plaintiff alleging that UVC, jointly with Villa Group,
 7 operates common resort areas, such as the pool where the Incident took place)). UVC points
 8 out that presumably the only other connection this case has with this forum is the secondary
 9 treatment Plaintiff received at UCSD. (Mem. Supp. Dismiss 18.)

10 Even considering these connections with California, the crux of this case, the
 11 Incident, occurred in Mexico, and there is no allegation of any wrongful conduct occurring
 12 in California. Notably, even Plaintiff is not a California resident. (Mem. Supp. Dismiss 21;
 13 *see* Compl. 2.) This case has minimal connections with California and the cost and time
 14 considerations with evidence and witnesses being located in Mexico would impose a heavy
 15 burden on this Court.

16 UVC also argues that litigating this case in California would impose “an unfair
 17 burden on California jurors who have absolutely no relationship to this litigation.” (Mem.
 18 Supp. Dismiss 21.) While this Court disagrees that California jurors have *absolutely no*
 19 connection with this litigation, this case will require bringing evidence and witnesses from
 20 Mexico, which will be time consuming and an extra burden on local juries.

21 Surely litigating this case in Mexico would be some burden on Mexico courts and
 22 juries. Considering that Plaintiff would be a foreign plaintiff to Mexico, the burden is
 23 noteworthy. However, the logistical concerns caused by evidence and witnesses being
 24 located in Mexico would cause a heavier burden on a California court and jury than it would
 25 a Mexico court and jury. Therefore, this factor weighs in favor of dismissal.

26 **d. Congestion in the Court**

27 UVC argues that the Southern District of California is already burdened with claims
 28 involving local residents and events that occurred in this district. (Mem. Supp. Dismiss 17.)

1 No information was submitted to the Court regarding the congestion of the Mexico courts.
 2 The origin of this dispute is in Mexico, and as discussed earlier, witnesses, documents, and
 3 evidence relevant to determining liability are located in Mexico. As already noted, it is
 4 logical that witnesses and evidence being located in Mexico will make trial in this Court
 5 more lengthy, which would further congest an already busy docket. Therefore, this factor
 6 weighs in favor of dismissal.

7 **e. Costs of Resolving a Dispute Unrelated to a Particular Forum**

8 As already discussed, this case has minimal relations to California. This is
 9 particularly apparent when considering the Incident occurred in Mexico (Compl. 1-2), one
 10 named Defendant is allegedly a Mexican corporation (Compl. 2), UVC asserts the owner
 11 of the Resort is a Mexican corporation (Mem. Supp. Dismiss 11-12; Madera Decl. ¶ 6), and
 12 UVC asserts the operator of the Premises is a Mexican corporation (Mem. Supp. Dismiss
 13 12; Madera Decl. ¶ 7). Also discussed earlier is the additional costs that would be involved
 14 with litigating this case in a California forum given that evidence and witnesses are located
 15 in Mexico. Considering the minimal relation this case has with California and the costs of
 16 litigating this case in California, this factor weighs in favor of dismissal.

17 After carefully considering all the public interest factors, this Court finds that public
 18 interests strongly favor dismissal.

19 **III. CONCLUSION**

20 Dismissal for forum non conveniens requires a showing of an adequate alternative
 21 forum, and that the balance of private and public interest factors favors dismissal.”
 22 *Carijano*, 643 F.3d at 1224. Having carefully considered the requisite factors, this Court
 23 finds that the State of Baja California Sur, Mexico, is an adequate alternative forum for this
 24 case. Further, after considering all the factors that inform a forum non conveniens
 25 determination, the private and public interest factors weigh strongly in favor of dismissal.

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1 Therefore, the Court hereby **GRANTS** UVC's motion to dismiss for forum non conveniens
2 (Doc. No. 4). This case is **DISMISSED WITHOUT PREJUDICE**.

3
4 **IT IS SO ORDERED.**

5
6 DATED: March 6, 2015

7 
8 Hon. Anthony J. Battaglia
U.S. District Judge